CHILES v. U.S.A

No. 95-4061.

Lawton M. CHILES, Jr., Governor of the State of Florida; State of Florida; Dade County Public Health Trust, an agency and instrumentality of Dade County, a political subdivision of the State of Florida, the School Board of Dade County, Florida, Plaintiffs—Appellants,

v.

UNITED STATES of America; Doris Meissner, Commissioner of the Immigration and Naturalization Service of the Department of Justice; Janet Reno, Attorney General of the United States; Jennifer Nelson, Acting Regional Administrator of the Southern Regional Office of the INS of the Department of Justice; Walter D. Cadman, District Director of the Miami District Office of the INS of the Department of Justice; Donna E. Shalala, Secretary of the United States Department of Health & Human Services, Defendants—Appellees.

NO. 90-3943

United States Court of Appeals,
Eleventh Circuit.

Nov. 8, 1995.

Appeal from the United States District Court for the Southern District of Florida. (No. 94-676-CIV-EBD), Edward B. Davis, Judge.

Before EDMONDSON and DUBINA, Circuit Judges, and CUDAHY*, Senior Circuit Judge.

EDMONDSON, Circuit Judge:

In this expedited appeal, Florida alleges it is injured by the United States' failure to enforce the immigration laws. The State asserts claims under both the Administrative Procedure Act and the United States Constitution. Florida asks for equitable restitution of its unreimbursed expenses or for declaratory relief and an injunction requiring the United States to fulfill its statutory and constitutional duties. The district court dismissed all counts, concluding the claims presented nonjusticiable political questions. For the reasons as set forth in the district court's order and for the reasons set out below, we AFFIRM.

Count II

In Count II,[1] Florida sues the Attorney General under the APA for her failure to perform the duties imposed by the immigration laws. *See* 8 U.S.C. 1103(a); 1251(a). The district court dismissed this claim as a political question. We conclude that, to the extent Florida asks this court to construe the statutory responsibilities of the Attorney General, the claim is justiciable. *See Japan Whaling Ass'n v. American Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866, 92 L.Ed.2d 166 (1986).

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* Honorable Richard D. Cudahy, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

[1]Count I is moot.

A. Standing

The Attorney General asserts Florida lacks standing to raise this claim.[2] On the redressibility component of standing, we recognize that the level of illegal immigration is dependent on many factors outside the control of the Attorney General. *See Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41–43, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). But, because an order against the named defendants would offer some relief to Florida, we suppose that the State does have standing to raise this claim.

B. The Statutes

Assuming justiciability and standing, we–for much the same reasons as are expressed in the district court's order[3]–conclude that the district court properly dismissed this count. The overall statutory scheme established for immigration demonstrates that Congress intended whether the Attorney General is adequately guarding the borders of the United States to be "committed to agency discretion by law" and, thus, unreviewable. *See* 5 U.S.C. § 701(a); *cf. Heckler v. Chaney*, 470 U.S. 821, 838, 105 S.Ct. 1649, 1659, 84 L.Ed.2d 714 (1985).[4] And, Section 1251(a) expressly gives the Attorney General discretion whether to deport a particular alien.

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[2]The district court did not address this argument.

[3]While the district court dismissed this count as nonjusticiable, it did discuss whether Congress intended judicial review under Section 1103(a). *Chiles*, 874 F.Supp. at 1339–41.

[4]The part of the statute relied on by Florida would not justify even an allegation of complete abdication of statutory duties to go to trial. *Cf. Heckler*, 470 U.S. at 833 n. 4, 105 S.Ct. at 1656 n. 4.

Count III

Count III alleges that the Federal Medicaid and AFDC reimbursement programs unconstitutionally discriminate against the state in violation of the Spending Clause (Art. I, § 8) and "other constitutional provisions guaranteeing equality among the states." While initial spending decisions are exclusively the domain of Congress,[5] if a specific constitutional limit is exceeded judicial review is possible, even if the case involves foreign policy. *Cf. INS v. Chada,* 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). But, because no specific constitutional limit on the spending power has been exceeded by the reimbursement policies of AFDC and Medicaid, we conclude this count was properly dismissed. *See Buckley v. Valeo,* 424 U.S. 1, 88–90, 96 S.Ct. 612, 668, 46 L.Ed.2d 659 (1976); *South Carolina v. Katzenbach,* 383 U.S. 301, 323-25, 86 S.Ct. 803, 816, 15 L.Ed.2d 769 (1966) (states not protected by Fifth Amendment's equal protection guarantee). Florida must seek relief in Congress. *Cf. Garcia v. San Antonio Metro. Transit Auth.,* 469 U.S. 528, 549-53, 105 S.Ct. 1005, 1017-18, 83 L.Ed.2d 1016 (1985).

Count IV

Count IV alleges the United States violates the Guarantee and Invasion Clause (Art. IV, § 4) and the Tenth Amendment by forcing Florida to provide unreimbursed benefits to illegal immigrants. For much the same reasons expressed in the order of the district court, we conclude that whether the level of illegal immigration is an "invasion" of Florida and whether this level violates the guarantee of a republican form of government present nonjusticiable political

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[5]Because of this circumstance, the district court concluded that this claim was nonjusticiable. *Chiles,* 874 F.Supp. at 1342.

questions. *See generally Baker v. Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). And, we agree that Florida's provision of benefits to illegal aliens is not the product of federal coercion of the kind which violates the Tenth Amendment. *Compare New York v. United States,* 505 U.S. 144, 173-78, 112 S.Ct. 2408, 2427-29, 120 L.Ed.2d 120 (1992) *with Plyler v. Doe,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982); *and Dep't of Health & Rehabilitative Services v. Solis,* 580 So.2d 146 (Fla.1991).

Conclusion

We recognize that the difficulty in fashioning a remedy for an alleged wrong can result in a case being nonjusticiable. *See Powell v. McCormack,* 395 U.S. 486, 515-17, 89 S.Ct. 1944, 1961, 23 L.Ed.2d 491 (1969). Because we conclude that Florida fails to state a claim upon which relief can be granted by a court, we do not reach this issue. The order of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 94-0676-CIV-DAVIS

LAWTON M. CHILES, JR., et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

_____/

ORDER ON MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

THE IMMIGRATION CRISIS that is currently facing the United States has culminated in the filing of this action. This problem is not new. As the then-President Ronald Reagan proclaimed in 1981:

> The ongoing migration of persons to the United States in violation of our laws is a serious national problem, detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens to the Southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

Proclamation No. 4865, 46 Fed. Reg. 48,107 (1981). The costs of this continuing influx of aliens are disproportionately concentrated in only a few states,[1] including Florida.[2]

BACKGROUND AND SUMMARY OF THE COMPLAINT

On April 11, 1994, Lawton M. Chiles, Jr., the State of Florida, the Dade County Public Health Trust, and the School Board of Dade County, Florida ("Plaintiffs") filed suit against the United States of America and several individual officers of the United States. The Plaintiffs' grievances with the United States are based on allegations that the United States has failed to properly enforce immigration policies, thereby causing the State of Florida to incur disproportionate and unfair expenses in educating and providing other public benefits to aliens.[3] Plaintiffs apparently realize the difficulty in having this court

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[1]The seven states with the largest numbers of undocumented aliens are: California, Florida, Texas, New York, Illinois, Arizona, and New Jersey. The Urban Institute, *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States*, September, 1994.

[2]In a report funded by the Department of Justice entitled *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States,* the Urban Institute analyzed the impact that undocumented aliens were having on seven states including Florida. The report estimated that Florida's undocumented alien population as of October 1992, was approximately 322,000 or 2.3% of the total population of Florida. The report estimated Florida's annual expenditures for (1) public schools for undocumented aliens in 1993–94 was $424 million ; (2) emergency services under Medicaid for undocumented aliens in 1993 was $22.5 – $29.1 million; and (3) incarcerating illegal aliens in 1994 will be $11.8 million. *Id.* at 5, 8, 11, and 13.

[3]The Plaintiffs complain about the expenses they are forced to incur on behalf of both legal and illegal aliens, arguing that even many legal aliens are not self-sufficient members of the community and that the state is forced to provide for these persons basic education, immunization from contagious diseases, food, housing, public transportation, and health care. *(See, e.g.*, Complaint ¶¶ 47, 51).

mandate that the executive branch of the United States enforce immigration laws; however, they still contend that "a mandatory injunction requiring defendants to make payments under statutes mandating the provision of financial assistance is well within the power of this court . . . ." (Complaint ¶ 14). They urge this Court to grant them relief because they have no other avenue in which to obtain a remedy:

> Plaintiffs have no administrative remedy to pursue, to influence or to change the decisions and policies of defendants, which decisions and policies permit and cause a massive and uncontrolled influx of aliens, including undocumented aliens, to enter and remain in the United States and the State of Florida.

(Complaint ¶ 61). They further argue that the political process cannot provide them with help:

> The national political process has provided no adequate safeguard against this discrimination. The costs imposed by the continuing influx of aliens on state and local governments are disproportionately concentrated in only a few states, including Florida. Representatives of other states have a political incentive to ignore such costs, or to provide only small and thus far ineffective tokens of assistance, rather than ensure that they are borne equitably. Accordingly, unless this Court grants appropriate relief, the State of Florida and the other plaintiffs will continue to incur and have to pay such costs as are described herein in the future.

(Complaint ¶ 64).

The complaint alleges four counts. In Count I, Plaintiffs allege that they are entitled to grants from an Immigration Emergency Fund administered by the Attorney General of the United States, and they ask the Court to direct that Defendants develop a plan to disburse that fund. *See* 8 U.S.C. § 1101 (1993). As relief, Plaintiffs demand that the Attorney General of the United States grant the State of Florida its share of the emergency funds. (Complaint ¶ 72).

In Count II of the complaint, Plaintiffs allege that, under 8 U.S.C. § 1103, Defendants have failed to "enforce and administer the immigration laws or to accept the financial responsibility for such failure." (Complaint ¶ 76). Plaintiffs also frame this cause of action under 5 U.S.C. § 702 and 5 U.S.C. § 706. Plaintiffs allege that they have no choice but to pay the cost of the Defendants' failure to enforce the immigration laws and that failure to absorb the costs would cause Florida to suffer injury through "increased crime, disease, illness, homelessness, and the many problems presented by an uneducated or poorly educated populace." (Complaint ¶ 77). Plaintiffs argue that instead of forcing Defendants to properly enforce the immigration laws, the problem could be "alleviated by an ongoing restitution to Plaintiffs of the prospective costs imposed on them by the Federal Abdication and Default Policy." (Complaint ¶ 81).

Count III challenges the operation of two federal programs, Medicaid and Aid for Families with Dependent Children ("AFDC"). Both programs have provisions limiting the payment of federal funds to certain aliens.[4] Plaintiffs argue that the State of Florida is disproportionately affected by these

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[4]Under AFDC, benefits are provided to citizens or "an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law . . . ." 42 U.S.C. § 602(a)(33).

restrictions because of the large number of aliens that live in Florida, and therefore ask the Court to order Defendants to provide these services. They allege that it "is arbitrary, irrational, and unconstitutional for Defendants not to provide Medicaid and AFDC assistance to Florida on the same basis that other states are assisted. That basis is need." (Complaint ¶ 87). Plaintiffs argue:

> The defendants' failure to compensate the plaintiffs for making need-based payments to aliens, while assisting virtually all other states with virtually all of their expenditures to provide need-based medical care and aid to families with dependent children, effectively penalizes plaintiffs for having a needy population that is disproportionately comprised of aliens, largely as a result of defendants' Federal Abdication and Default Policy.

(Complaint ¶ 89). Plaintiffs also allege that Defendants are in violation of Article IV, § 4 and Article I, § 8 of the Constitution. (Complaint ¶¶ 90, 91).

Count IV of the complaint alleges that the Defendants have imposed the financial burdens of immigration on the State of Florida thereby violating the Guarantee and Invasion Clauses of Article IV of the Constitution and the Tenth Amendment by requiring Florida to provide social welfare services to these immigrants. (Complaint ¶¶ 97, 98). Plaintiffs allege that the failure to properly enforce the immigration laws has resulted in an "invasion" of the State of Florida by aliens and has "seriously impaired the constitutional guarantee of a republican form of government." (Complaint ¶ 97). As in Count II, rather than asking the Court to force the executive to enforce the immigration laws, Plaintiffs ask the Court to grant a mandatory injunction requiring the Defendants to pay

restitution until the immigration laws are enforced properly. (Complaint ¶ 104).[5]

STANDARD OF REVIEW

The Defendants seek dismissal of the entire complaint under Federal Rule of Civil Procedure 12(b)(6). To state a claim, Federal Rule of Civil Procedure 8(a) requires, inter alia, "a short and plain statement of the claim showing that the pleader is entitled to relief." The Court must "take the material allegations of the complaint and its incorporated exhibits as true, and liberally construe the complaint in favor of the Plaintiff." *Burch v. Apalachee Community Mental Health Services, Inc.*, 840 F.2d 797, 798 (11th Cir. 1988) (citation omitted), aff'd, 494 U.S. 113 (1990). The law in this Circuit is well settled that "the 'accepted rule' for appraising the sufficiency of a complaint is 'that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'." *SEC v. ESM Group, Inc.*, 835 F.2d 270, 272 (llth Cir.) (quoting *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)), cert. denied, 486 U.S. 1055 (1988). The moving party bears a heavy burden. *St. Joseph's Hospital, Inc. v. Hospital Corp. of America*, 795 F.2d 948, 953 (llth Cir. 1986).

PARTIES ARGUMENTS AND COURT'S DECISION

The Defendants present three general arguments in support of dismissal of all four counts of the complaint in the

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[5]The Plaintiffs argue that counts I and III of the complaint are sustainable under existing law but admit that counts II and IV would require this Court to extend the law as it currently exists.

aggregate. Then, they discuss the complaint count by count, urging that each count in the complaint fails to state a claim in its own right.

A. Count I

Before addressing Defendants' general arguments, the Court will address a new development as it relates to Count I. As stated earlier, in Count I, Plaintiffs allege that they are entitled to grants from an Immigration Emergency Fund administered by the Attorney General of the United States, and they ask the Court to direct that the Defendants develop a plan to disburse that fund. *See* 8 U.S.C. § 1101 (1993).

In 1986, Congress authorized a continuing annual appropriation of $35 million to be used to reimburse states for costs incurred in meeting immigration emergencies. In 1990, Congress adopted an amendment to 8 U.S.C. § 1101 which allowed the Attorney General to disburse up to $20 million of this $35 million annually to states without the President's declaration of an immigration emergency. In 1991, the Attorney General was directed to promulgate regulations governing the process by which states could be reimbursed with the appropriated funds. *See* Pub. L. 102140, Title VI, § 610, 105 Stat. 832.

Although Proposed Immigration Emergency Fund Rules were first published on January 14, 1992, final rules were not adopted until June 14, 1994, subsequent to the filing of this lawsuit. See 59 Fed. Reg. 30520 (June 14, 1994). These Final Rules were not adopted until eight years after the $35 million was allocated to reimburse states, four years after the Attorney General was given permission to disburse the funds,

and three years after the Attorney General was directed to promulgate regulations for the disbursement of these funds.[6]

As these Rules have recently been promulgated, Plaintiffs have not been able to demonstrate that they have sought relief under the Rules.[7] Until such time as Plaintiffs have sought and been denied relief pursuant to these new rules, this Count is not ripe for the Court's review and must be dismissed.

B. The General Arguments

The Defendants' three general arguments are as follows: (1) that the entire complaint presents a political question or dispute that is not justiciable; (2) that the Plaintiffs have no standing to bring suit because they have not alleged and cannot allege that the Defendants are the direct cause of their injuries; and (3) that all counts in the complaint except Count I must be dismissed because the Defendants are immune from suit and have not waived their sovereign immunity.

Political Question

Defendants' first argument is that the entire complaint presents a political question or dispute that is not justiciable. They argue that the complaint goes to (1) Congress's choices in allocating resources, and (2) the Executive's enforcement of the laws, neither of which are justiciable.

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[6]An old Florida Cracker saying, "the old he-coon walks just before the light of day," has received a substantial amount of publicity lately in the State of Florida. It is possible that the current Attorney General, a lifelong Florida resident, understands Cracker and realized that the sun was about to rise and, therefore, issued the final Immigration Emergency Fund Rules.

[7]The Court expects that the Attorney General will make an expedient determination as to whether an immigration emergency exists and, if so, will diligently disburse any available funds to those states disproportionately affected by the continuing influx of aliens.

"The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." *Japan Whaling Ass'n v. American Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866, 92 L.Ed.2d 166 (1986). The Judiciary is not suited to make such decisions because courts are ill equipped to set national policies or define standards for matters that are not legal in nature. *Id.* (citation omitted). To determine "whether a question falls within the political question category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations."[8] *Baker v. Carr,* 369 U.S. 186, 209, 82 S.Ct. 691, 706, __ L.Ed __ (1962) (quotation omitted).

Defendants argue that this controversy is a policy dispute between the State of Florida and the Federal Government over the proper allocation of federal resources and the execution of discretionary policies. Thus, the case presents a non-justiciable political question inappropriate for judicial

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[8]As the Supreme Court stated in *Baker v. Carr:*

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. at 217, 82 S.Ct. at 710.

resolution because it requires the Court to adjudicate in areas of foreign policy, national defense, immigration and the allocation of federal resources. Additionally, Defendants assert that the Court is unable to compensate the State of Florida because of [*sic*] the Court lacks a definable standard for evaluation of Plaintiffs' claims that the federal enforcement of immigration laws is inadequate and, therefore, should be left to the other branches of the Federal Government to resolve.

It is undisputed that the Federal Government's control over immigration is plenary. "The authority to control immigration — to admit or exclude aliens — is vested solely in the Federal Government." *Truax v. Raich,* 239 U.S. 33, 42, 36 S.Ct. 7, 11 (1915) (citation omitted). The Supreme Court, in *Faillo v. Bell,* 430 U.S. 787, 97 S.Ct. 1473, 52 L.Ed.2d 50 (1977), stated that "'over no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens." *Id.* at 792, 97 S.Ct. at 1478, citing *Oceanic Navigation Co. v. Stranahan,* 214 U.S. 320, 339, 29 S.Ct. 671, 676, 53 L.Ed. 1013 (1909). But in *Baker v. Carr,* the Supreme Court carefully pointed out that not every matter touching on politics falls under the political question doctrine. 369 at 211, 82 S.Ct. at 707 (1969). Specifically, it is "error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Id.*

The Court shall address the political question doctrine in terms of each count of the Complaint.

a. Count II

Count II is based on the failure of the Federal Government to enforce and effectively administer immigration laws. In essence, Plaintiffs are seeking an order of the Court requiring the United States to cease its policy of "arbitrary and irrational nonenforcement" of the immigration laws or to

provide equitable restitution in the alternative. Plaintiffs claim that the Attorney General is abusing her discretion in failing to enforce immigration laws. Plaintiffs admit that ordering a broad-scale injunction against the United States to enforce the immigration laws may well be beyond the competence of the Court as it would involve the Court in matters relating to the conduct of foreign relations and the deployment of the military forces of the United States. (Complaint, ¶14). The Court agrees and will therefore restrict its discussion to Plaintiffs' alternative ground for relief, equitable restitution.

Plaintiffs allege that in Count II they are only asking that the Court exercise its inherent authority of statutory interpretation to determine whether the United States is fulfilling its statutory duty to the State of Florida. Plaintiffs allege that the Attorney General has an obligation to deport illegal aliens under 8 U.S.C. § 1103. This section, which pertains to the powers and duties of the Attorney General, states in part:

> **(a) Attorney General**
>
> . . . He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. . . .

8 U.S.C. § 1103 (1993). Plaintiffs claim that the Attorney General has in essence abdicated this responsibility.

Plaintiffs assert that the present case is analogous to *Japan Whaling Ass'n v. American Cetacean Soc.*, 478 U.S. 221, 106 S.Ct. 2860, 92 L.Ed.2d 166 (1986), in that both cases

require the court to interpret a statute that has political overtones. In *Japan Whaling*, the petitioners sought an injunction requiring the Secretary of Commerce to certify to the President that Japan, in its whale harvesting, was diminishing the effectiveness of the International Whaling Commission quotas. Title 22, section 1978 of the United States Code specifically states that "[w]hen the Secretary of Commerce determines that nationals of a foreign country . . . are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President." 22 U.S.C. § 1978. The Supreme Court concluded that it was within the [*sic*] its authority to determine whether 22 U.S.C. § 1978 imposed a duty upon the Secretary, as this was simply a matter of statutory interpretation. The Supreme Court recognized that *Baker* authorizes courts to interpret congressional legislation. *Id.*, 106 S.Ct. at 2866.

In the present case, Plaintiffs are asking the Court to review the overall immigration policy of the United States and decide if the Attorney General's failure to deport illegal aliens is a violation of 8 U.S.C. § 1103. Plaintiffs argue that section 1103 imposes on the Attorney General an affirmative duty to deport all illegal aliens. The Court does not find 8 U.S.C. § 1103 to be analogous to the statute referred to in *Japan Whaling* that imposes a specific duty, in that section 1103 allows for the Attorney General's discretion in determining whether to deport an illegal alien. Rather, in reviewing 8 U.S.C. § 1103, the Court finds it to be analogous to the duty imposed on each United States attorney under 28 U.S.C. § 547. Section 547 states in part:

> Except as otherwise provided by law, each United States attorney, within his district, shall —

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(1) prosecute for all offenses against the United States;
. . .

28 U.S.C. § 547 (1993). Although § 547 appears to require each United States attorney to prosecute all offenses against the United States, no such duty exists. It is well established that the Executive Branch, and therefore the United States Attorney, has exclusive authority and absolute discretion to decide whether to prosecute a case. *United States v. Nixon,* 418 U.S. 696, 693, 94 S.Ct. 3090, 3100, 41 L.Ed.2d 1039 (1974). *See also Confiscation Cases,* 7 Wall. 454, 19 L.Ed. 196 (1869). This recognition of prosecutorial discretion is attributable in no small part to the general unsuitability for judicial review of the attorney's decision to refuse to prosecute. *See Heckler v. Chaney,* 470 U.S. 821, 831, 105 S.Ct. 1649, 1655, 84 L.Ed.2d 714 (1985).

Like 28 U.S.C. § 547, the Court concludes that the Attorney General's decisions under 8 U.S.C. § 1103 not to deport are unsuitable for review. A decision of this sort requires a complicated balancing of factors which are peculiarly within the Attorney General's expertise. The Attorney General must consider many factors including whether deportation best fits the agency and the Federal Government's overall policies, and whether the political climate of an alien's native country makes deportation unsuitable. Thus, the Court finds the Attorney General's decision not to deport presumptively immune from judicial review. *See Heckler,* 470 U.S. at 831–32, 105 S.Ct. at 1655–56.

In *Heckler v. Chaney,* 470 U.S. 835, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985), the Supreme Court defined circumstances in which judicial review of agency inactions is appropriate. *Heckler* dealt with the Federal Drug Administration's refusal to take enforcement action concerning the use of certain drugs. The Supreme Court concluded that under 5 U.S.C. § 701(a)(2)

there is a presumption of unreviewability of an agency's decision not to undertake enforcement action. This presumption may be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers. *Id.* 470 U.S. at 832–33, 105 S.Ct. 1656. In a footnote to its opinion, the Supreme Court stated that it expressed no opinion on whether, where an agency has 'consciously and expressly adopted a general policy' that is so extreme as to amount to an abdication of its statutory responsibilities, such decisions are unreviewable under § 701(a)(2). The Court stated that in those situations the statute conferring authority on the agency might indicate that such decisions were not "committed to agency discretion." *Id.* fn. 4.

In the instant case, Florida alleges that the Attorney General's inaction has resulted in an abdication of her statutory responsibility. As stated in *Heckler*, under 8 U.S.C. § 701(a)(2) there is a presumption of unreviewability of the Attorney General's decision not to undertake enforcement action. Florida has failed to identify any guidelines contained in the statutes that would rebut this presumption.

As for Florida's allegation that there has been an abdication of the Attorney General's responsibility, the Court can identify nothing in 8 U.S.C. § 1103, which confers the power to enforce the immigration laws, that would indicate that the Attorney General's decision not to undertake enforcement action in certain situations is not "committed to agency discretion." *Id.* fn. 4. Therefore, the Court must dismiss Count II.

b. Count III

In Count III, Plaintiffs seek either declaratory relief or damages. Plaintiffs request that the Court declare the current

restrictions against providing Medicaid and AFDC benefits to illegal aliens either contrary to applicable statutes or unconstitutional for failing to provide payments to Florida for expenses on behalf of aliens.[9]

Plaintiffs base this claim on the Tenth Amendment[10] and the Guarantee Clause[11] of the United States Constitution

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[9]Medicaid is authorized under 42 U.S.C. § 1396b and implemented under 42 C.F.R. §§ 435.406 and 435.408. AFDC is authorized under 42 U.S.C. § 202 and implemented pursuant to 45 C.F.R. §§ 233.50, 233.51 and 233.52.

The foregoing provisions prohibit reimbursing states for any expenses incurred on behalf of an alien not having a specified "lawful status." Medicaid reimbursement for illegal aliens is limited to "emergency medical conditions," as defined in 42 U.S.C. § 1396b(v)(3). Similarly, states may not be reimbursed for providing AFDC coverage to an alien, no matter how impoverished, unless the alien has a recognized lawful status. See 42 U.S.C. § 602 (a) (33). Hence, the welfare needs of the hundreds of thousands present in Florida who have no lawful status must be met with other funds by state and local governments.

[10]The Tenth Amendment to the Constitution of the United States of America states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S.Const. amend. X.

[11]The Guarantee Clause, Article IV, Section 4 of the United States Constitution provides:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the

alleging that the Federal Government's policies disproportionately affect Florida, thus rendering the State of Florida politically isolated and powerless. Plaintiffs seek a declaration that the restrictions are unconstitutional or, in the alternative, ask the Court to require that the Federal Government pay for expenses incurred for Medicaid and AFDC to illegal aliens.

The Federal Government's decision not to provide Medicaid or AFDC to illegal aliens is based on the Federal Government's powers over naturalization and immigration, and spending.[12] The Supreme Court stated in *Mathews v. Diaz:*

> For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government. Since decisions in these matters may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances,

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> Legislature cannot be convened) against domestic violence.

U.S. Const. art. IV, § 4.

[12]Article I, Section 8 of the United States Constitution sets out the Federal Government's spending powers; this provision states:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

U.S. Const., art. I, § 8.

> such decisions are frequently of a character more appropriate to either the Legislature or the Executive than the Judiciary. . . . Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with greatest caution.

Mathews v. Diaz, 426 U.S. 67, 81–82, 96 S.Ct. 1883, 1892, 48 L.Ed.2d 478 (1976) (footnotes omitted).

The Federal Government has determined that it would not be in the United States' best interest to provide Medicaid and AFDC to illegal aliens.[13] It is not difficult to comprehend the rationale behind this decision; to provide these benefits would create additional incentives for illegal immigration into the United States. This could have a serious and substantial impact on this country's immigration and naturalization scheme as well as on the nation's relationships with foreign countries. If the Court were to order the Federal Government to reimburse the states for the Medicaid and AFDC costs, the Court would be intruding into the realm of foreign policy, an arena in which the Judiciary does not belong.

In addition, it is well settled that the power of the Federal Government to spend is limited only by the requirement that such power shall be exercised to provide for the general welfare of the United States. *United States v. Butler*, 297 U.S. 1, 65–6, 56 S.Ct. 312, 319, 80 L.Ed.2d 477 (1936). Once the Federal Government determines that it is in

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[13]This case demonstrates that what may be in the best interests of the United States, can be devastating to individual states, in this case, the State of Florida.

the best interest of the United States not provide these benefits to illegal aliens, the Court's inquiry must end.[14]

The State of Florida chose to participate in both Medicaid and AFDC. *See* 42 U.S.C. §§ 601, 1396 (1991). As a condition of participation, the State of Florida must abide by the conditions of the programs, including the lack of funding for illegal aliens.[15]

The Court finds that there is a textually demonstrable constitutional commitment of the issue of whether to provide Medicaid and AFDC benefits to illegal aliens to the Legislative and Executive branches of the Federal Government. Thus, this issue presents a political question, and, therefore, must be dismissed.

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[14]In their response to the motion to dismiss, Plaintiffs assert that Congress is not spending for the general welfare when it funds these programs for some but not all of the states on the basis of need." (D.E. 53, p. 47.) As already stated, decreasing the incentive for the continued flow of illegal aliens into the United States is within the "general welfare" of the United States.

[15]Plaintiffs make an additional argument that as a result of the Federal Government's policy not to provide Medicaid and AFDC benefits to illegal aliens, the State of Florida is bearing an unfair burden. Plaintiffs allege that although the statute is neutral on its face, there is an uneven impact in Florida due to the disproportionate presence of illegal aliens in Florida.

Plaintiffs assert that within the Tenth Amendment and Guarantee Clause is a requirement that all states be treated equally. (D.E. 53, p. 47.) It is clear from the facts that the Federal Government refuses to provide Medicaid and AFDC to all illegal aliens no matter what state the illegal aliens are from. The fact that the results of the policy have a greater affect on the State of Florida, than on other states, does not create an actionable claim.

To illustrate this point, if tomorrow the Federal Government decided to discontinue all wheat subsidies to all farmers in the United States, the impact of this change in policy would obviously have its greatest impact on the Midwestern states. Although the Midwestern states would be called upon to bear a much greater burden, this does not make the policy of no wheat subsidies unconstitutional.

c. Count IV

Count IV is for declaratory and injunctive relief for violation of Plaintiffs' rights under Article IV, Section 4 of the United States Constitution and the Tenth Amendment. Plaintiffs assert that the Federal Government's failure to protect the State of Florida against invasion of illegal aliens "has brought coercive pressure to bear on the state and local political processes to provide education, welfare and medical care to these aliens,"[16] and "blurred lines of political accountability" in violation of the Tenth Amendment and the Guarantee Clause of the Constitution.[17] (D.E. 53, p. 10). In essence, Plaintiffs claim that the Federal Government's failure to control the influx of illegal aliens into the State of Florida prevents the government of Florida from functioning in a democratic way.[18] Thus, Plaintiffs ask the Court to order that Defendants terminate the policies that have subjected Florida to an invasion of aliens or requests equitable restitution.

Defendants argue that this count is barred by the political question doctrine as there exists no judicially

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[16]Due to the continuing influx of aliens, heavy burdens are placed on Florida's available resources. Among the continuing costs are those of public infrastructure improvements, housing, feeding, medical care, education, incarceration, and parole and probation supervision.

[17]Under the Tenth Amendment, "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." *New York v. U.S.*,_ U.S._, 112 S.Ct. 2408, 2417, __L.Ed.2d__ (1992).

[18]Plaintiffs assert that "Florida's lack of any means to protect itself against the ever increasing demands together with defendants' denial of financial assistance has extinguished the lines of political accountability. . . ." (D.E. 53, p. 42). Plaintiffs claim that Federal officials remain insulated from the consequences of their policies, while Florida elected officials are forced to shape their agendas based on federal priorities and not those of their constituents. (D.E. 53, p. 43.)

manageable standard "for which the Court can determine at what point the migration becomes an invasion or when the social costs of migration somehow invade [the State of Florida's] sovereignty." (D. E. 73, p 9). Defendants argue that without such a standard, Count IV presents a political question for which the Court lacks jurisdiction. *See Nixon v. U.S.*, __U.S__, 113 S.Ct. 732, 735, __ L. Ed. 2d__ (1993) ("the lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch").

The Supreme Court has repeatedly stated that "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it . . ." *Matthew v. Diaz*, 426 U.S. 67, 83, 96 S.Ct. 1883, 1892, 48 L.Ed.2d 478 (1976); *Baker*, 369 U.S. at 217, 82 S.Ct. at 710.

Plaintiffs claim that the Supreme Court, in *New York v. U.S.*, sets out a judicially manageable standard that should be applied to this cause of action. Plaintiffs claim that the "government breaches its duty when its failure to protect against invasion of illegal aliens imposes coercive pressure on the state and local political processes, and blurs lines of political accountability to such a degree as to infringe on the sovereignty interests protected by the Tenth Amendment under such cases as *New York v. United States*." (D.E. 53). The Court does not find this to be a manageable standard when applied to the instant case.

In *New York*, the Supreme Court was faced with determining whether federal legislation which required states to adopt regulations for the disposal of radioactive wastes, 42 U.S.C. § 2021(d)(2)(C), took away political accountability to such an extent as to infringe on the sovereign powers of the states. The Supreme Court concluded that the Federal

Government's mandate that states adopt legislation diminished the accountability of the state government to its electorate and therefore violated the Tenth Amendment.

Justice O'Connor, writing for a six Justice majority, drew a careful distinction between Congress' "substantial powers to govern the Nation directly, including in areas of intimate concern to the States," and the prohibited "ability to require the States to govern according to Congress' instructions." *New York*, 112 S.Ct. at 2421. Justice O'Connor emphasized that "even when Congress has the authority to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." *Id.* at 2423. The Supreme Court concluded that even though Congress has the power to regulate the disposal of radioactive waste, Congress does not have the power to order the states to adopt legislation to regulate in this area. *Id.* at 2429. Thus, the Supreme Court declared 42 U.S.C. § 2021(d)(2)(C) unconstitutional.

The distinction between *New York* and the present case is that, in *New York*, Congress ordered the states to adopt specific policies. In the instant case, Congress has adopted the policies themselves and did not order any action on the part of the states. Congress did not command that the State of Florida do anything. In fact, there is no specific legislation at issue. That Florida has chosen to provide certain services to aliens is not a result of an order from Congress, but a conscious policy choice on behalf of the State of Florida.[19] As the instant case does not involve a situation where Congress has ordered

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[19]The Court acknowledges Plaintiffs' argument that any choice Florida has is, in essence, a Hobson's choice. The State of Florida is presented with the following dilemma: If Florida chooses not to provide services to illegal aliens including closing schools, emergency rooms, etc., the impact on the health, safety and welfare of its citizenry could be potentially devastating. If, on the other hand, Florida chooses to provide the services, the cost of these services could cripple the State of Florida.

legislative action on the part of the states, the standard set out in *New York* is not appropriate.

The Plaintiffs fail to suggest, and the Court is unable to identify, a manageable standard for determining when the migration, as well as the costs associated with such migration, reaches the point at which it invades the State of Florida's state sovereignty. In order to grant the restitution requested by Plaintiffs, the Court would be forced to review the United States entire enforcement of Federal immigration laws including the enforcement methods used and their effectiveness, determine the reasonableness of budget allocations, determine whether more resources are available and, if so, decide how those additional resources should be allocated. The Court is unable to identify satisfactory criteria for making these determinations.[20] This is clearly beyond the

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[20]Plaintiffs rely on *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), for support for their contention that the Federal Government should bear the costs associated with illegal aliens. In *Plyler*, the Supreme Court was faced with the issue of whether the individual states could deny elementary education to children who were illegal aliens. The Supreme Court concluded that, under the Fourteenth Amendment, states could not refuse elementary education to illegal alien children.

In a dissenting opinion, joined by Justices White, Rehnquist and O'Connor, Justice Burger recognized the financial burden that this decision would place on the states. Justice Burger stated that:

> It does not follow, however, that a state should bear the costs of educating children whose illegal presence in this country results from the default of the political branches of the Federal Government. A state has no power to prevent unlawful immigration, and no power to deport illegal aliens; those powers are reserved exclusively to Congress and the Executive. If the Federal Government, properly charged with deporting illegal aliens, fails to do so, it should bear the burdens of their presence here.

Id. at 242, 106 S.Ct. at 2408, n. 1 (Burger, J., dissenting). Although this Court agrees with the rationale employed by Justice Burger in his dissenting opinion, to date, neither this Court nor the Supreme Court has been able to identify a judicially manageable standard under which a court could order the Federal Government to bear the costs associated with the mass influx of illegal aliens.

Judiciary's authority, and should be left to the Legislative and Executive branches of government.

The Court recognizes that the State of Florida is suffering under a tremendous financial burden due to the methods in which the Federal Government has chosen to enforce the immigration laws. The State of Florida is in desperate need of relief from this overwhelming burden it is being unfairly forced to bear. The Court also recognizes that, as the State of Florida has already sought relief through the political process, the State may have no other method for obtaining relief from this burden should this Court determine that the issue is a political question. But recognizing these facts does not create a legal theory under which this Court may grant relief. Without such a legal theory, this Court must dismiss this action.[21]

Accordingly, it is

ORDERED AND ADJUDGED that Defendants' Motion to Dismiss is GRANTED. It is

FURTHER ORDERED AND ADJUDGED that Plaintiff's Motion for Mandatory Injunction as to Count I and for Partial Summary Judgment Requiring Such Mandatory Injunction is DENIED as MOOT.

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[21]As the Court has determined that this action is barred by the political question doctrine, the Court need not address Defendants' additional arguments.

This case is DISMISSED. All pending motions not otherwise ruled upon are DENIED as MOOT.

DONE AND ORDERED in Chambers, at Miami, Florida, this _____ day of December, 1994.

/s/

EDWARD B. DAVIS
UNITED STATES DISTRICT JUDGE

APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Article IV, §4, United States Constitution:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

2. Tenth Amendment, United States Constitution:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

3. 8 U.S.C. §1103(a)

> The Attorney General shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however*, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the

Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter. He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detain employees of the Service for duty in foreign countries.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 94-0676-CIV-DAVIS

LAWTON M. CHILES, JR., et al.

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.

Defendants.
_____/

COMPLAINT

Plaintiffs, Lawton M. Chiles, Jr., Governor of the State of Florida; the State of Florida; Dade County Public Health Trust; and the School Board of Dade County, sue defendants United States of America; Doris Meissner, Commissioner of the Immigration and Naturalization Service ("INS"); Janet Reno, Attorney General of the United States; Jennifer Nelson, Acting Regional Administrator of the Southern Regional Office of the INS; Walter D. Cadman, District Director of the Miami District Office of the INS; and Donna E. Shalala, the Secretary of the United States Department of Health & Human Services (the defendants are referred to collectively as the "Federal Government"), and allege:

I.
JURISDICTION

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 702, *et seq.*, 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), specifically in that a substantial portion of the events or omissions giving rise to the claims alleged arose within the jurisdiction of the United States District Court for the Southern District of Florida.

3. Immigration into the United States is controlled by the Attorney General, through the INS. *See*, 8 U.S.C. § 1101, *et seq.* and 28 C.F.R. § 0.105, *et seq.*

II.
INTRODUCTION

4. This case involves the unprecedented and grossly disparate economic burden forced upon the State of Florida by the Federal Government's continuing failure to enforce or rationally administer its own immigration laws since well before 1980. This burden is particularly egregious with respect to persons who have been permitted by the Federal Government to enter and/or remain in Florida without complying with those laws.

5. The Federal Government has exclusive and plenary control of the immigration laws and their enforcement. Article I, § 8 of the United States Constitution gives the Federal Government authority to provide for the defense of the nation, to regulate foreign commerce and to create a uniform law of naturalization. The individual States are thus prohibited from adopting immigration laws. *See, Henderson v. Mayor of*

City of New York, 92 U.S. 259, 23 L.Ed. 543 (1876) (holding state immigration laws to be an unconstitutional violation of the federal power to regulate foreign commerce).

6. Yet, since well before 1980, the Federal Government, through the action and inaction of the individual defendants (and their predecessors in office), has abdicated its responsibility under the immigration laws and the United States Constitution to enforce and administer rational immigration policies.

7. The result of the Federal Government's failure to control immigration and protect the national borders has resulted in a massive and uncontrolled influx of aliens who enter the United States and the State of Florida in violation of the immigration laws. As then-President Ronald Reagan proclaimed in 1981, "The ongoing migration of persons to the United States in violation of our laws is a serious national problem, detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens to the Southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region." "High Seas Interdiction of Illegal Aliens," by Ronald Reagan, President of the United States of America, Proclamation 4865 of September 29, 1981, 46 F.R. 48107. A grossly disproportionate share of this alien population arrives at Florida's shores, and continues to reside here. Florida is without legal or actual power to stop this massive and uncontrolled influx. The term "alien" or "alien person," as used in this complaint, means those persons defined as "aliens" in 8 U.S.C. § 1101(a)(3). The term "undocumented alien," as used in this complaint, means those foreign nationals who: (a) entered the United States without inspection; (b) entered with

fraudulent documentation; (c) after entering legally with a temporary visa, remained in the United States after the visa expired; or (d) who are excludable pursuant to 8 U.S.C. § 1182.

8. While the Federal Government is exclusively and directly responsible for the uncontrolled influx of aliens to Florida, the Federal Government has failed to provide for the needs of such aliens once they arrive. As one commentator has noted:

> [W]hile the federal government has concentrated on U.S. immigration policy, it has ignored immigrants' needs when they arrive. The federal government has no comprehensive immigrant policy on language, orientation or education to help newcomers adjust to a new society. The federal government provides limited benefits to a narrow and shrinking proportion of the newcomer population, namely refugees and legalized aliens.
>
> Unlike the federal government, states and localities do not have the luxury of ignoring the needs of newcomers. The public health and welfare of many state and local communities depends upon successful newcomer transitions. *By federal default, states [sic] and local governments have become the stewards of immigrant policy.*

Dunlap, "The Absent Federal Partner," 67 Spectrum: The Journal of State Government, 6, 7 (Winter 1994) (emphasis added).

9. Plaintiffs are well aware of the positive impact immigrants have had and will continue to have on Florida. They bring a cultural diversity and richness to the State.

However, the cost to the State of the uncontrolled influx of aliens, particularly undocumented ones, has been overwhelming. The need of these persons for services is substantial, and Florida *must* provide these services to maintain the health, safety, and welfare of the community.

10. The Federal Government has failed to provide reimbursement for many of the services Florida is required by law to afford aliens once they arrive upon the shores of Florida, as well as other necessary services which must be afforded them to serve the public health and safety of the State. Thus, while Florida has borne the dislocations brought on by an exploding alien population (accounting for 95% of the population growth in Dade County alone over the past ten years), the Federal Government has not accepted the responsibility to pay for many of the costs of this alien population, but rather has compelled Florida to absorb them.

11. While acknowledging that the uncontrolled influx of aliens to the State of Florida has had severe financial consequences, the Federal Government has failed to take appropriate action to either control the influx or to pay for the resulting costs. As a result of the Federal Government's failure to cover the costs resulting from its unwillingness to control immigration, the State of Florida is the victim of an ongoing immigration emergency that severely endangers the lives, property, safety, and economic welfare of the residents of the State. It has been estimated that the cost to Floridians of providing services to aliens amounted to $2.5 billion in fiscal year 1993 from State and local sources combined. At the State level alone, costs for providing services to aliens are estimated at $751 million per year. Total estimated costs for undocumented aliens are approximately $884 million per year, representing nearly 35% of the total cost of providing services to aliens in fiscal year 1993. These absorbed costs are detailed in "The Unfair Burden: Immigration's Impact on Florida,"

prepared by the Executive Office of the Governor, Office of Planning and Budgeting, Intergovernmental Affairs Policy Unit and Florida Advisory Council on Intergovernmental Relations, pp. i, iii (March 1994) (attached as Exhibit A hereto).

12. It is arbitrary, capricious, and an abuse of discretion for defendants to refuse to protect the integrity of Florida's borders and to also refuse to pay the costs which have resulted from that refusal. In effect, defendants have punished Florida for the very conditions in which defendants have placed Florida. This is repugnant to constitutional norms of equality and fairness.

13. It is repugnant to constitutional norms of equality and fairness that the Federal Government has opened the door to an uncontrolled influx of aliens, has received and continues to receive most of the taxes paid by such aliens once they are here, but has shifted most of the costs of such aliens to a handful of state and local governments. In fact, according to 1993 testimony by Charles Wheeler of the National Immigration Law Center before the U.S. House Subcommittee on Human Resources, approximately two-thirds of the tax dollars paid by aliens go to the Federal Government, while most of the health, education and social service costs that are incurred are paid for by the state and local governments in which such aliens reside. *See*, Sharry, "Myths, Realities and Solutions," 67 Spectrum: The Journal of State Government, 20, 21 (Winter 1994).

14. On information and belief, there are many things the Federal Government could do to increase the effective enforcement of the immigration laws. Requiring the Federal Government to take these actions may well be within the purview of this Court. Nevertheless, enjoining defendants to fully enforce the immigration laws (or mandating rational administration) may well be beyond the practical competence

of this Court, since it could involve the Court in matters relating to the conduct of foreign relations and the deployment of the military forces of the United States. In any case, a mandatory injunction requiring defendants to make payments under statutes mandating the provision of financial assistance is well within the power of this Court under *Bowen v. Massachusetts*, 487 U.S. 879, 108 S.Ct. 2722, 101 L.Ed.2d 749 (1988). Equally within the Court's authority is the power to issue an injunction directing the defendants to fulfill constitutional obligations that can be met through the provision of financial assistance as an alternative to effective enforcement of the immigration laws.

15. Counts I and III of this Complaint are warranted by existing law. Counts II and IV are warranted by a rational and logical argument for extension of the law established by the United States Supreme Court in *Bowen v. Massachusetts, supra*, and *New York v. United States*, __ U.S. __, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). Reliance is also placed on both the majority and dissenting opinions in *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). Plyler forbids the states from withholding public education from illegal alien children and thus obliges them to bear the cost of the federal government's failure to enforce the immigration laws effectively. Five Justices specifically have acknowledged the federal government's responsibility to bear such costs. Thus, Chief Justice Burger's *Plyler v. Doe* dissent, in which he was joined by three other Justices, stated:

> It does not follow...that a state should bear the costs of educating children whose illegal presence in this country results from the default of the political branches of the Federal Government. A state has no power to prevent unlawful immigration, and no power to deport illegal aliens... If the Federal Government,

> properly chargeable with deporting illegal aliens, fails to do so, it should bear the burden of their presence here.

457 U.S. at 242, n. 1. In addition, Justice Powell, who concurred in the majority opinion, also stated that the Federal Government should bear financial responsibility for its actions. 457 U.S. at 241. This action is brought to impose that burden on the Federal Government.

III.
STANDING

16. Plaintiffs have all suffered serious economic detriment by reason of the actions of defendants herein complained of, which, as the Court of Appeals for the 11th Circuit stated in *Chiles v. Thornburgh*, 865 F.2d 1197, 1209 (11th Cir. 1989), is "the epitome of an injury in fact." This injury has been to their respective "sovereign interest[s], that is [their respective] abilit[ies] to exercise [their] power." *Id.* at 1208. This injury will be "redressed by a favorable judicial decision" granting the relief herein sought. *Id.* at 1209.

IV.
PARTIES

17. Plaintiff Lawton M. Chiles, Jr. ("Chiles"), is a citizen, resident, and taxpayer of the United States and Florida. Chiles is the Governor of the State of Florida and, pursuant to Article IV of the Florida Constitution, exercises the supreme executive power of the State of Florida. The Governor is also responsible for initial preparation of the State budget which must be balanced. *See* Article VII, § 1(d), Fla. Const.; and Fla. Stat. § 216.162 (1993). As such, the Governor must take responsibility for recommending to the Florida legislature that there either be cuts in other important state spending or

increases in Florida taxes to cover the costs of providing essential services to many aliens. The costs of dealing with the immigration emergency in which Florida finds itself are imposed and compelled by the Federal Government. Chiles brings this action in his individual and official capacities.

18. Plaintiff State of Florida is a sovereign state of the United States.

19. Plaintiff School Board of Dade County, Florida (the "Dade County School Board"), is a governmental unit established pursuant to Article 9, § 4, of the Florida Constitution, to operate, control, and supervise all free public schools in Dade County, Florida.

20. Plaintiff Dade County Public Health Trust is a county public health trust established pursuant to Chapter 154, Part II, Florida Statutes. The Dade County Public Health Trust has the power to sue and be sued. Plaintiff Dade County Public Health Trust is an agency and instrumentality of Dade County that governs, operates, and manages Jackson Memorial Hospital and other satellite health care facilities pursuant to Florida Statute § 154.07 (1993).

21. Defendant United States of America is a sovereign nation with the powers and duties specified in the Constitution of the United States and the Acts of Congress.

22. Defendant Doris Meissner is the Commissioner of the Immigration and Naturalization Service ("INS") of the United States Department of Justice ("DOJ"), and is sued in her official capacity (the "INS Commissioner"). The acts complained of herein are those of the present INS Commissioner and several of her predecessors.

23. Defendant Janet Reno is the Attorney General of the United States ("Attorney General"), and she is sued in her official capacity. The Attorney General is the head of the United States Department of Justice, an executive department of the United States, pursuant to 28 U.S.C. § 503. The acts complained of herein are those of the present Attorney General and several of her predecessors.

24. Defendant Jennifer Nelson is the Acting Regional Administrator of the INS Southern Regional Office located in Dallas, Texas ("INS Acting Regional Administrator"), and she is sued in her official capacity. The acts complained of herein are those of the present INS Acting Regional Administrator and several of her predecessors as Regional Administrator, acting and permanent.

25. Defendant Walter D. Cadman is the District Director of the INS District Office in Miami, Florida ("INS District Director"), and he is sued in his official capacity. The acts complained of herein are those of the present INS District Director and several of his predecessors.

26. Defendant Donna E. Shalala is the Secretary of the United States Department of Health and Human Services ("HHS Secretary"), and she is sued in her official capacity. The acts complained of herein are those of the present HHS Secretary and several of her predecessors.

V.
APPLICABLE CONSTITUTIONAL PROVISIONS

27. Article I, § 8, clause 1, United States Constitution, provides, in pertinent part: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States . . ."

28. Article IV, § 4, United States Constitution, provides, in pertinent part: "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; . . ."

29. The Tenth Amendment of the United States Constitution provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

VI.
THE CONSTITUTIONAL AND STATUTORY SCHEME: DEFENDANTS' OFFICIAL DUTIES

30. The Attorney General is, pursuant to 8 U.S.C. § 1103, charged with the administration and enforcement of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 *et seq.*, as amended (the "INA"), and all other laws relating to the immigration and naturalization of aliens, except insofar as the INA or such laws relate to the powers of the President, the Secretary of State, the officers of the Department of State, or diplomatic and consular officers. The Attorney General serves at the pleasure of the President of the United States.

31. Pursuant to 28 U.S.C. § 510, the Attorney General may from time to time make such provisions as she considers appropriate authorizing the performance by any other officer, employee, or agency of the DOJ of any function of the Attorney General. Defendants INS Commissioner, INS Acting Regional Administrator and INS District Director are all officers and employees of DOJ under the control of the Attorney General.

32. Pursuant to 8 U.S.C. § 1103(a), the Attorney General is authorized to appoint such employees of the INS as

she deems necessary, and to delegate to them or to any officer or employee of DOJ in her discretion any of the duties and powers imposed upon her by the INA. The Attorney General may require or authorize any employee of the INS or DOJ to perform or execute any of the powers, privileges, or duties conferred or imposed by the INA or regulations thereunder upon any other employee of the INS. She has the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and is required to appoint for that purpose such number of employees of the INS as to her shall appear necessary and proper. The Attorney General is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by the INA or regulations thereunder upon officers and employees of the INS.

33. Pursuant to 8 U.S.C. § 1103(b), the INS Commissioner is charged with any and all responsibilities and authority in the administration of the INS and of the INA which are delegated to her by the Attorney General or which may be prescribed by the Attorney General.

34. The Attorney General has, with limitations and exceptions believed to be irrelevant here, delegated to the INS Commissioner the duties to administer and enforce the INA and all other laws relating to immigration, naturalization, and nationality. This delegation is found in 28 C.F.R. §§ 0.105(a) *et seq.* and 8 C.F.R. § 2.1 and 100.2(a). In addition, pursuant to 28 C.F.R. § 0.105(b) and 8 C.F.R. § 2.1, the INS Commissioner shall, for these purposes, exercise or perform any of the authority, functions, or duties conferred upon the Attorney General by the INS and all other laws relating to immigration, including the authority to issue regulations.

35. Defendant INS Acting Regional Administrator is responsible for the administration and enforcement of all laws relating to immigration, nationality, and naturalization within her assigned geographic area of activity pursuant to 8 C.F.R. § 100.2(d), and has jurisdiction over, and provides general guidance and supervision to, inter alia, INS District 6, the INS District Office headquartered in Miami, Florida (the "INS Miami District Office"), pursuant to 8 C.F.R. § 100.4(b)(6). The INS Acting Regional Administrator is subject to the general supervision of the INS Commissioner.

36. Defendant INS District Director is responsible for the administration and enforcement of the INA and all other laws relating to immigration, nationality, and naturalization within his assigned geographic area unless any such power is required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. The INS Miami District Office has jurisdiction over, *inter alia*, the State of Florida pursuant to 8 C.F.R. § 100.4(b)(6).

37. Defendant HHS Secretary is responsible for the administration of the federal Medicaid and Aid to Families with Dependent Children programs pursuant to 42 U.S.C. §§ 602 and 1396b.

VII.
FACTS
THE FEDERAL GOVERNMENT'S ABDICATION AND DEFAULT POLICY

38. The Federal Government is charged with controlling immigration to this country and protecting the borders of the United States, including the borders of the State of Florida.

39. The Federal Government has failed and continues to fail and, upon information and belief, will continue to fail in its constitutional duty to control immigration and to protect the borders of the State of Florida. It has, likewise, defaulted in its alternative duty to adequately reimburse the plaintiffs for the costs its policies have imposed upon them.

40. Upon information and belief, the Federal Government has adopted and implemented what is at best a grossly inadequate enforcement policy that not only fails to prevent, but actually encourages, the continued uncontrolled influx of aliens, including undocumented aliens, to the State of Florida. Furthermore, the INS has not deported any significant number of those aliens who either are immediately or who later become subject to deportation under the immigration laws. Collectively, the Federal Government's actions constitute the adoption and implementation of a policy that not only flouts the laws designed to protect the borders of the United States but the very structural concepts of the Constitution, a policy of abdication and default. It will be referred to herein as the "Federal Abdication and Default Policy."

41. As a direct consequence of the Federal Abdication and Default Policy, large numbers of aliens continue to enter and remain in the United States on an uncontrolled basis. In fact, the then-Attorney General testified on July 30, 1981, to a joint subcommittee of Congress: "We have lost control of our borders. We have pursued unrealistic policies. We have failed to enforce our laws effectively." Administration's Proposals on Immigration and Refugee Policy, 1981: Joint Hearing before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary and Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary, 97th Cong., 1st Sess., at 6 (1981) (statement of William French Smith, Attorney General of the United States). The

circumstances had become so outrageous that, in litigation then ongoing in this Court, the United States and the INS asserted, without hyperbole, that the influx of aliens was so massive as to constitute an "invasion" of the United States, and, in so doing, noted that the United States had an unfulfilled constitutional duty to prevent this "invasion." *See Louis v. Nelson*, 544 F. Supp. 973, 975 (S.D. Fla 1982). These conditions have not changed through a series of successive Attorney Generals and INS officials, up to and including the individual defendants here.

FLORIDA'S IMMIGRATION EMERGENCY

42. A grossly disproportionate number of these aliens, including undocumented aliens, reside in or have resided in the State of Florida. INS estimated that as of October 1992, 85% of all undocumented aliens lived in just six States (Florida, California, New York, Texas, Illinois and New Jersey). INS also estimated that at least 345,000 undocumented aliens reside in the State of Florida, comprising at least 36% of Florida's alien population. Based upon the information available to the State, the State believes and alleges the actual number of all such aliens in the State to be much greater than that estimated. Specifically, the State's Department of Health and Rehabilitative Services has recently estimated an influx of 1,000,000 aliens during the past 30 years and 230,000 permanently located aliens in the past 15 years. The State believes and alleges that the number of aliens in the State will not decrease in the foreseeable future, but, indeed, will increase as influenced by the economic and political upheaval in many of the islands and countries that have direct access to Florida.

43. The massive uncontrolled influx of aliens constitutes an immigration emergency that imposes tremendous economic costs upon the State of Florida, its citizens and its taxpayers. Although the United States provides certain

programs and funds, such as AFDC, Medicaid, SLIAG grants (State Legalization Impact Assistance Grants authorized by the Immigration Reform and Control Act of 1986, Pub. L. 99-603), and Refugee Assistance grants to care for some aliens, these programs and funds are limited at best and pay only a small fraction of the costs incurred on behalf of aliens. For example, the Refugee Assistance grants have dropped 47.79% since 1986, while the national refugee population has increased 47.46%. Domestic Refugee Resettlement Packet, prepared by the State of Oregon Refugee Program, p. 23 (1994). Moreover, Title VI Bilingual Education experienced a 47% decline in real expenditures between 1980 and 1991. As noted by one commentator, this occurred at a time (1985 to 1990) when the number of students who were considered "limited English proficient" was rising by 52%. Sharry, "Myths, Realities and Solutions," 67 Spectrum: The Journal of State Government 20, 21 (Winter 1994). Thus, while the level of immigration has increased, the federal funds available to meet the needs of such aliens have significantly decreased from their original inadequate levels.

44. The State of Florida is and has been involved in two state-federal "cooperative programs." The purpose of these federal programs is to help states assist persons in need. In each program, the State is required to contribute state dollars in order to obtain a certain amount of federal funding. The two programs in which Florida has participated and continues to participate are:

(a) Medicaid — as provided for under 42 U.S.C. § 1396b and implemented under 42 C.F.R. § 435.406; and

(b) Aid to Families with Dependent Children ("AFDC") — as provided for under 42 U.S.C. § 602 and implemented

under 45 C.F.R. §§ 233.50, 233.51, and 233.52.

By reason of restrictions contained in the foregoing statutes and regulations, funds in the Medicaid and AFDC programs either are very limited or are not available for many aliens, in particular the undocumented. Thus, the State cannot be reimbursed for any expenditures made on behalf of such ineligible aliens. Florida has no choice but to respond to the needs of aliens within the State, even though Florida is not paid for the cost of providing such assistance.

45. Consequently, the State of Florida, its political subdivisions and local government entities, are *forced*, by the Federal Abdication and Default Policy, to absorb the ever--increasing costs of providing care for aliens who enter and reside here as a result of such Federal Policy. Similarly, the Florida Legislature and plaintiffs Dade County Public Health Trust and Dade County School Board have also been forced to utilize their own tax revenues to pay these costs.

46. The Federal Government classifies aliens in many different ways for many different reasons. Some aliens enter the United States without authorization, but thereafter attain legal status, either because they are political refugees or for other reasons; some enter and remain in the United States without authorization; some enter legally but are now here illegally for a variety of reasons, including expiration of their visas; some entered this country, either legally or illegally, but are now incarcerated for crimes, and because of their resulting criminal records will never be eligible for legal residence in this country.

47. The aggregate cost of dealing with the uncontrolled and massive influx of aliens to Florida has been tremendous, while the bulk of the tax revenues paid by these

aliens flows to the Federal Government. It is true that the costs incurred by the State for any individual alien may differ, depending upon changes in the alien's status, education, and ability to work. Aliens who eventually attain legal status may become self-sufficient, as they can work, pay taxes, and buy medical insurance. Plaintiffs do not denigrate the ultimate positive contributions of such legal aliens to the State, and the cultural diversity and richness brought by these immigrants. However, *until* an alien attains a legal status and self-sufficiency, the cost of that alien to the State is significant on an individual basis, and overwhelming in the aggregate. Aliens need basic education, immunization from contagious diseases, food, housing, public transportation, and health care. Additionally, to maintain the health, safety, and welfare of the entire community, plaintiffs must provide correctional facilities and services for criminal aliens.

48. Moreover, many aliens *never* attain legal status, yet are allowed by the Federal Abdication and Default Policy to remain in the United States indefinitely, without regard to their ability to support themselves and without regard to the financial impacts such persons have on state and local governments. Such aliens cost the State huge amounts of money each year: for their education in the English language and other schooling; for their medical care; for their health and welfare; for their legal defense; for their supervision and incarceration when they commit crimes; and for other costs to the public infrastructure.

FLORIDA IS COMPELLED TO PAY THE COST OF THE FEDERAL ABDICATION AND DEFAULT POLICY

49. By reason of the decision of the United States Supreme Court in *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), it is clear that the Dade County School Board and other school boards within the State may not

constitutionally refuse to provide education to any child, even if such child is here illegally. In addition, the State of Florida and its public school systems operated by the School Board of Dade County and the school boards in Florida's other 66 counties are required by federal law to provide English language instruction to all students who are not proficient in English, regardless of whether these children or their parents entered or remained in the United States in violation of the law. *See Lau v. Nichols*, 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); Equal Opportunity Act of 1974, § 204(f), 20 U.S.C. § 1703; *Morales v. Shannon*, 516 F.2d 411 (5th Cir.), *cert. denied*, 423 U.S 1034, 96 S.Ct. 566, 46 L.Ed.2d 408 (1975). Accordingly, Florida provides an "ESOL" (English for Speakers of Other Languages) program pursuant to Florida Statutes §§ 233.058 and 236.081 (1993). Many students in the ESOL programs are aliens, children of aliens, or illegal aliens. Despite the federal mandate to provide education to illegal alien children on a nondiscriminatory basis, and despite defendants' responsibility for the presence of undocumented aliens as a result of their Federal Abdication and Default Policy, the defendants do not contribute any reasonable amount toward the cost of ESOL instruction to such aliens.

50. On February 28, 1994, The Miami Herald reported that the number of foreign-born children in the Dade County schools approached the number of refugees who entered that school system during the Mariel boatlift of 1980, and may exceed that number. The report continued:

> The federal government pays less than three percent of Dade County's total expenses for foreign-born kids . . . school leaders say the funding gap has reached crisis proportions.
>
> . . .

> The federal government doesn't reimburse Florida school districts for all their costs in teaching immigrant children. Dade, for instance, says it only receives (sic) $8.6 million last year in federal aid for immigrant education, but it costs 35 times that: $300 million or about $4,000 apiece for the district's 74,872 foreign-born students. That figure, however, includes students from countries such as Cuba, who are now are (sic) legal residents or U.S. citizens.
>
> The district gets nothing for students who are here illegally. Yet it costs $68.2 million to educate the district's 16,395 undocumented students, administrators say.
>
> . . .
>
> A Dade County immigration impact report... also flatly states the district can no longer meet its goal of constructing 56 new schools between 1989 and 1997 [funded by local property tax funds].
>
> 'The substantial influx of refugees was not anticipated,' it reads. 'As a practical matter, the district has now tapped all available state and local funding sources for its capital construction program.'

"Schools Seek Funds For Foreign Influx," The Miami Herald, February 28, 1994, at 1B. As noted by an official of the Dade County School Board, the failure of the United States to pay for these aliens results in "taking [the State of Florida's] money away from other students." Id. Plaintiff School Board of Dade County asserts that the above-cited facts are true and correct.

51. In addition to education and emergency medical care, it has been asserted that Florida has a legal obligation to provide other benefits to aliens, both legal and illegal. *See, e.g.*, *In the Interest of Guzman*, Case No. 93-157554 (D003), (Fla. 11th Cir. Ct. 1993) and *In the Interest of Remy*, Case No. 94-15030 (D003) (Fla. 11th Cir. Ct. 1994), in which attempts were made to obtain Special Immigrant Juvenile Status for undocumented alien children by claiming a need for intervention by the State's foster care system. These are two examples of numerous dependency proceedings where the State has been challenged for refusing to accept jurisdiction and responsibility for unaccompanied alien children who are, or should be, in federal custody. But even if no legal obligation exists, as a practical matter plaintiffs have no choice but to expend state and local government funds to support, educate, house, care for, feed, supervise, and incarcerate many aliens who enter the State as a result of the Federal Abdication and Default Policy, or else suffer injury to its sovereign interests through increased crime, disease, illness, homelessness, and the many problems presented by an uneducated or poorly educated populace.

THE COSTS PAID BY FLORIDA FOR ALIENS WITHIN ITS BORDERS

52. The costs paid by plaintiffs for aliens within the State (whether or not "undocumented") as a result of the Federal Abdication and Default Policy constitute a severe financial burden that is difficult to calculate. Indeed, it is virtually impossible in many instances to distinguish between costs incurred for "undocumented aliens" as opposed to other aliens, either because plaintiffs may not seek such information (as has occurred in the case of the School Board of Dade County, pursuant to a consent agreement executed in 1990) or because the programs in which such aliens are participating do not make such distinctions. Any attempts to distinguish costs

of "undocumented" aliens are further complicated by the fact that many "undocumented" aliens live in "mixed" households, where some residents are "legal" and others are not. *See*, Sharry, "Myths, Realities and Solutions," 67 Spectrum: The Journal of State Government, 20, 21 (Winter 1994).

53. Plaintiff State of Florida has expended *at least* the following unreimbursed amounts for the care, welfare, supervision, or incarceration of aliens within the time frames indicated, and believes the unreimbursed expenditure is substantially in excess of such amounts:

A. EDUCATION COSTS	AMOUNT
1. English For Speakers of Other Languages, 1988–1993	$954.7 million[1]
2. School Nutritional Food Program, 1980–1993	$10.2 million
3. Adult Education, 1992	$23.5 million
4. Public Infrastructure 1980–1993	$142.5 million
TOTAL EDUCATION COSTS	**$1.131 billion**

B. HEALTH CARE COSTS	AMOUNT
1. Medicaid, 1989–1993	**$70.3 million**

[1]Includes total cost of providing ESOL instruction to all non-English speaking students, whether U.S. citizens, legal or undocumented aliens.

C. SOCIAL SERVICES		AMOUNT
1.	Aid To Families With Dependent Children, 1991–93	$.4 million
2.	Food Stamps Administration, 1991–1993	$13.4 million
	TOTAL SOCIAL SERVICES COSTS	**$13.9 million**

D. CORRECTIONS	AMOUNT
1. Mariel Reimbursement Program, 1988–1993	$52.6 million
2. Other Incarcerations, 1988–1993	$130.7 million
3. Probation and Parole, 1980–1993	$33.1 million
4. Public Infrastructure 1980–1993	$33.6 million
TOTAL CORRECTIONS COSTS	**$250.0 million**
TOTAL COSTS	**$1.465 billion**

The State of Florida continues and will continue to bear such costs.

54. Plaintiff School Board of Dade County has expended in excess of the following unreimbursed amounts in providing educational programs to aliens within the time frames indicated:

FISCAL YEAR	AMOUNT
1993–1994 (Projected)	$210,993,295
1992–1993	$190,270,232
1991–1992	$196,180,429
1990–1991	$191,102,987
1989–1990	$198,792,896
TOTAL	**$987,339,839**

The School Board of Dade County, Florida, continues and will continue to bear such costs.

55. Plaintiff Dade County Public Health Trust has expended in excess of the following unreimbursed amounts in providing health care services to aliens within the time frames indicated:

YEAR	AMOUNT
Unreimbursed costs for undocumented aliens, October 1, 1990, through September 30, 1993	$102.0 million
Unreimbursed costs for other aliens, 1992–1993	$66.7 million
TOTAL	**$168.7**

The Dade County Public Health Trust continues and will continue to bear such costs.

THE FEDERAL GOVERNMENT'S REFUSAL TO TRANSFER FEDERAL FUNDS APPROPRIATED FOR AN IMMIGRATION EMERGENCY SUCH AS FLORIDA'S

56. Forcing Florida to bear a disproportionate share of the costs imposed by the Federal Abdication and Default Policy is a violation of the rights of the State of Florida. This flagrant violation of the rights of the State of Florida described herein is illustrated by the defendants' failure to take the action necessary to make available to the States the Immigration Emergency Fund appropriated by the Congress over eight years ago.

57. In 1986 Congress adopted the Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 113, 100 Stat. 3359, which amended 8 U.S.C. § 1101, to authorize the disbursement of funds upon the President's determination that an immigration emergency existed (the "Immigration Emergency Fund"). This amendment authorized an annual appropriation sufficient to maintain a balance of $35 million, such funds to be used to reimburse state and local governments providing assistance in meeting an immigration emergency.

58. A further amendment to 8 U.S.C. § 1101, adopted in 1990, allowed the Attorney General to disburse up to $20 million a year from the available $35 million in the Fund without the President's determination of an immigration emergency. Pub. L. 101-649, § 705, 104 Stat. 5087. Further amendments to 8 U.S.C. § 1101 required the Attorney General to prescribe regulations to delineate scenarios that would be

deemed to constitute an immigration emergency, and the process by which states are to be paid for costs incurred as a result of such an emergency. Pub. L. 102-140, Title VI, § 610, 105 Stat. 832.

59. Although the initial appropriation of $35 million was authorized in 1986, to date none of the Immigration Emergency Fund has been disbursed to the State of Florida or to any other state, and by these delays the Federal Government has saved itself as much as $280 million.

60. Further, as a result of the Attorney General's refusal and/or failure to develop the necessary regulations to disburse the funds, no money from the Immigration Emergency Fund has been made available to the State of Florida or any other State pursuant to the 1990 and 1991 amendments.

THE NEED FOR APPROPRIATE RELIEF FROM THIS COURT

61. Plaintiffs have no administrative remedy to pursue, to influence or to change the decisions and policies of defendants, which decisions and policies permit and cause a massive and uncontrolled influx of aliens, including undocumented aliens, to enter and remain in the United States and the State of Florida.

62. Plaintiffs have no administrative remedy they may pursue by which they could compel defendants to comply with their statutory and constitutional obligations to provide nondiscriminatory funding to assist plaintiffs in providing services and assistance to aliens.

63. Plaintiffs have requested on numerous occasions that defendants provide funds to assist plaintiffs with the costs they have incurred. Defendants have refused or otherwise failed to provide such funds. In fact, although Congress specifically appropriated the funds eight years ago to create the Immigration Emergency Fund as delineated in paragraphs 56–60, such funds still have not been made available for states such as Florida. Without such funds, plaintiffs will continue to have to pay a disproportionate share of the costs of a national problem that is a direct consequence of defendants' decisions to avoid their constitutional and statutory duties.

64. The national political process has provided no adequate safeguard against this discrimination. The costs imposed by the continuing influx of aliens on state and local governments are disproportionately concentrated in only a few states, including Florida. Representatives of other states have a political incentive to ignore such costs, or to provide only small and thus far ineffective tokens of assistance, rather than ensure that they are borne equitably. Accordingly, unless this Court grants appropriate relief, the State of Florida and the other plaintiffs will continue to incur and have to pay such costs as are described herein in the future.

COUNT I

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION: FAILURE TO DEVELOP REGULATIONS GOVERNING DISBURSEMENT OF THE IMMIGRATION EMERGENCY FUNDS; DECLARATORY AND INJUNCTIVE RELIEF

65. Plaintiffs repeat and reallege the allegations in paragraphs 1 – 64, and incorporate them by reference herein.

66. This is an action for review of agency action and for injunctive relief pursuant to 5 U.S.C. § 702 and/or 5 U.S.C. § 706.

67. Eight years ago, Congress appropriated federal funds to assist states such as Florida in meeting what it deemed an "immigration emergency." Congress provided an initial appropriation of $35 million for this purpose to the Immigration Emergency Fund, and with an annual appropriation thereafter sufficient to maintain a balance of $35 million in this Fund. However, the Federal Government has never recognized the existence of an immigration emergency.

68. An immigration emergency, as contemplated by Pub. L. 99-603, has existed in Florida since before 1986, and continues to exist. The delay in providing for the disbursement of the Immigration Emergency Fund is unreasonable and unlawful and has served to save the Federal Government up to $280 million. On information and belief, the defendants will continue to delay disbursement of the emergency funds unless enjoined from doing so by this Court.

69. Despite the Congress' clear intent to provide even this modest and ultimately inadequate measure of assistance, defendant Attorney General still has failed to develop the necessary regulations to disburse the Immigration Emergency Fund pursuant to Pub. L. 102-140, Title VI, § 610. Once the regulations for disbursement are developed and approved, the Attorney General has the authority to disburse up to $20 million of the total fund each year, without a Presidential declaration of an immigration emergency. Had such a plan been timely adopted by the Attorney General, some disbursements could have been made, and as much as $60 million could have been available to the States, including Florida, over the last three years.

70. As a result of the Attorney General's failure to develop a plan to disburse the Immigration Emergency Fund, plaintiffs have expended and must continue to expend state and local government funds to support, educate, house, feed, supervise, incarcerate and provide medical care to many aliens who enter Florida, or else suffer injury to its sovereign interests through increased crime, disease, illness, homelessness and the many problems presented by an uneducated or poorly educated populace.

71. The Attorney General has failed and continues to fail to comply with her duties to develop a plan to disburse the Immigration Emergency Fund.

72. Plaintiffs do not have an adequate remedy in any other court.

WHEREFORE, plaintiffs pray for an order directing the Attorney General to comply with her duties under 8 U.S.C. § 1101, as amended by Pub. L. 99-603, Pub. L. 101-649 and Pub. L. 102-140; develop a plan providing for the disbursement of the Immigration Emergency Fund; grant to the State of Florida its just share of such funds; and grant such other relief as may be just and proper under the circumstances.

COUNT II

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION; FAILURE TO ENFORCE AND EFFECTIVELY ADMINISTER IMMIGRATION LAWS; DECLARATORY AND INJUNCTIVE RELIEF.

73. Plaintiffs repeat and reallege the allegations in paragraphs 1 – 64, and incorporate them by reference herein.

74. This is an action for review of agency action and for declaratory and injunctive relief pursuant to 5 U.S.C. § 702 and/or § 706.

75. The administrative actions and omissions of the United States, the INS Commissioner, the Attorney General, the INS Acting Regional Director, and the INS District Director in carrying out their obligations to enforce and effectively administer the immigration laws are an abuse of their discretion, representing at best an arbitrary, capricious, and irrational Federal Abdication and Default Policy.

76. Defendants have failed and will continue to fail in their duties to effectively enforce and administer the immigration laws or to accept the financial responsibility for such failure.

77. Plaintiffs have no choice, by legal or practical requirement, but to pay for the cost of defendants' Federal Abdication and Default Policy. Plaintiffs must expend funds to incarcerate, supervise, care for, house, feed, support and educate the massive influx of aliens who reside here. If they do not provide such services, the State will suffer injury through increased crime, disease, illness, homelessness, and the many problems presented by an uneducated or poorly educated

populace. Moreover, the public health and safety of the State will continue to be materially and adversely impacted.

78. Defendants' Federal Abdication and Default Policy, and the actions taken to implement such policy, constitute an abuse of discretion, and are arbitrary and capricious, in that Florida and its political subdivisions have effectively been required to pay a grossly disproportionate share of the costs of a national problem as compared to almost all other states, resulting in a studied inequality among the states contrary to a fundamental premise of the United States Constitution.

79. The sovereign interests of the State and its political subdivisions have been violated by the abdication of federal responsibility represented by the Federal Abdication and Default Policy, in that these plaintiffs have no ability to control immigration, yet have been forced to pay for its adverse impacts to the public health and safety of the State.

80. Under the circumstances described herein, the defendants' abdication of administrative responsibility, being repeated and continuous over many years with full knowledge of its material and adverse impact on the State of Florida and the other plaintiffs, is judicially reviewable by this Court.

81. Although defendants could of course satisfy their legal obligations by carrying out their duties to enforce the immigration laws effectively, the arbitrary and irrational burden visited on the plaintiffs could equally be alleviated by an ongoing restitution to the plaintiffs of the prospective costs imposed on them by the Federal Abdication and Default Policy from this date forward. For the reasons stated in paragraph 14, a broad-scale injunction against defendants' unlawful activity might raise troubling issues of judicial power. However, no such issues would be raised by a mandatory injunction

compelling the ongoing restitution to the plaintiffs of the costs imposed on them by the Federal Abdication and Default Policy as an alternative remedy until such time as defendants bring their enforcement policies into compliance with applicable law.

WHEREFORE, plaintiffs pray that this Court:

(i) enter a declaratory judgment determining that defendants have failed to comply with their duties under applicable laws;

(ii) as relief for the past and continuing violations of applicable laws by such defendants, enter a mandatory injunction directing the defendants to cease their policy of arbitrary and irrational non-enforcement of the immigration laws or, in the alternative, to provide to plaintiffs equitable restitution of the amounts that plaintiffs are and will continue to be required to spend as a result of defendants' unlawful actions and inactions; and

(iii) grant such other relief as may be just and proper in the circumstances.

COUNT III

DECLARATORY AND INJUNCTIVE RELIEF AS TO CERTAIN FEDERAL COOPERATIVE PROGRAMS; UNCONSTITUTIONALITY OF PROGRAM RESTRICTIONS.

82. Plaintiff Chiles and the State of Florida repeat and reallege the allegations contained in paragraphs 1 – 64, and incorporate them by reference herein.

83. This is an action for declaratory and injunctive relief.

84. As set out in paragraph 44, plaintiff State of Florida is currently involved in two state-federal "cooperative programs," which are designed to help states assist persons in need. In each program, the State is required to contribute state dollars in order to obtain a certain amount of federal funding. These two programs are Medicaid and AFDC.

85. In particular, defendants United States and the HHS Secretary are obligated to assist the State of Florida to meet the needs of aliens present within the State and other persons present in the State as a result of defendants' actions and inactions.

86. Defendants United States and the HHS Secretary may not constitutionally discriminate in their application of the Medicaid and AFDC statutes against states with large populations of needy aliens such as Florida.

87. Florida has no control over immigration and must provide assistance to its needy. It is arbitrary, irrational, and unconstitutional for defendants not to provide Medicaid

and AFDC assistance to Florida on the same basis that other states are assisted. That basis is need.

88. The statutory and regulatory restrictions applied to federal Medicaid and AFDC programs are arbitrary, irrational, discriminatory, and unconstitutional insofar as they deny Florida payment of costs it would be entitled to claim but for a person's alien status. These statutes and rules have been construed by defendants United States and the HHS Secretary to provide that funds in the Medicaid and AFDC programs are either very limited or are not available for many aliens, in particular the undocumented, and that the State cannot be paid for any expenditures made on behalf of ineligible aliens. The vast majority of states participating in the Medicaid and AFDC programs receive payments to assist all or nearly all their needy recipients. Florida is an exception to this norm, due solely to the presence in the state of a large population of aliens, many of whom are here due to the defendants' Federal Abdication and Default Policy.

89. The defendants' failure to compensate the plaintiffs for making need-based payments to aliens, while assisting virtually all other states with virtually all of their expenditures to provide need-based medical care and aid to families with dependent children, effectively penalizes plaintiffs for having a needy population that is disproportionately comprised of aliens, largely as a result of defendants' Federal Abdication and Default Policy. Statutory provisions and administrative regulations that penalize plaintiffs for having a disproportionately large population of needy persons who are aliens deprive Florida of the "equal footing" it was to be afforded on its entry into the United States and places it in a studiedly unequal position from most of its sister states.

90. To make the State of Florida and its political subdivisions responsible for the medical care and welfare expenses of such aliens directly violates the fundamental principles of federalism inherent in the United States Constitution, the Tenth Amendment, and Article IV, § 4.

91. To make the State of Florida and its political subdivisions responsible for the medical care and welfare expenses of such alien residents in Florida while providing much more adequate financial assistance to help other states care for populations that are not foreign born, directly violates the norm of equality implicit in Article I, § 8, clause 1 of the United States Constitution.

92. Defendants United States and the HHS Secretary have violated Florida's rights by effectively "commandeering" the legislative and political processes of the State, including those of its political subdivisions, and making them responsible for the care and welfare of aliens generally.

93. Defendants United States and the HHS Secretary are, in effect, punishing Florida for conditions created by the Federal Government's abdication of its statutory and constitutional responsibilities.

WHEREFORE, plaintiffs Chiles and the State of Florida pray for entry of a judgment declaring the above-cited restrictions on alien coverage either contrary to the applicable statutes or unconstitutional in failing to provide for payments to the State of Florida for expenditures on behalf of aliens; and further, plaintiffs pray for an order directing defendants United States and the HHS Secretary to pay to the State of Florida all Medicaid and AFDC sums that represent expenditures by the State on behalf of aliens.

COUNT IV

DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF PLAINTIFFS' RIGHTS UNDER ARTICLE IV, SECTION 4, UNITED STATES CONSTITUTION AND THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

94. Plaintiffs repeat and reallege the allegations in paragraphs 1 – 64, and incorporate them by reference herein.

95. This is an action for declaratory and injunctive relief.

96. Because of defendants' gross failure to control immigration, hundreds of thousands of aliens reside in Florida, placing numerous and extremely heavy demands upon the State's available resources. Plaintiffs have incurred continuing costs, including, but not limited to, the costs of public infrastructure improvements, housing, feeding, medical care, education, incarceration, and parole and probation supervision, all of which are attributable to the presence of massive numbers of aliens within the State of Florida. The aliens' presence is due to the defendants' Federal Abdication and Default Policy. These expenses will not only continue, but will increase, as the result of the Federal Abdication and Default Policy not to enforce the immigration laws and the Federal Government's failure to provide financial assistance to plaintiffs to compensate for such failure.

97. The imposition on the State of Florida of these burdens by reason of defendants' abdication of their constitutional responsibility and their obligations to enforce and administer the immigration laws constitutes a violation of

Article IV, § 4 of the United States Constitution. Practically speaking, and as heretofore conceded by defendants in this Court, the abdication of their obligations by defendants has created a virtual "invasion" of the State of Florida by aliens and has seriously impaired the constitutional guarantee of a republican form of government.

98. Defendants have violated and will continue to violate plaintiffs' rights under both Article IV, § 4 and the Tenth Amendment to the United States Constitution. Although *Pacific States Telephone & Telegraph Co. v. Oregon*, 223 U.S. 118 (1912) concluded that states' rights under the "Guarantee Clause" (but not the "Invasion Clause") were not judicially enforceable, this conclusion was sharply questioned in Merritt, Deborah, "The Guarantee Clause and State Autonomy: Federalism For a Third Century," 88 Colum. L. Rev. 1 (1988). The United States Supreme Court cited that article with apparent approval in *New York v. United States*, __ U.S. __, 112 S.Ct. 2408, 2433, 120 L.Ed.2d 120 (1992), acknowledging that "[m]ore recently, the Court has suggested that perhaps not all claims under the Guarantee Clause present nonjusticiable political questions." *See also, Reynolds v. Sims*, 377 U.S. 533, 582, 84 S.Ct. 1362, 1392, 12 L.Ed.2d 506 (1964). In any case, the Tenth Amendment clearly creates judicially enforceable obligations on the United States and in favor of the states with respect to issues of state sovereignty. *See, New York v. United States, supra.*

99. Defendants have grossly ignored their own obligations with respect to immigration control, and the impacts their policies have on state and local governments. Defendants have also failed to provide financial assistance to meet the cost of their Federal Abdication and Default Policy and thereby protect plaintiffs and their constituents from the lack of political accountability that results when state and local officials must find ways to meet the cost of problems that are

imposed by federal policy. The failure to enforce the immigration laws effectively and the resulting imposition of costs on the plaintiffs, coupled with the defendants' failure alternatively to provide offsetting financial assistance, violates the Tenth Amendment and fundamental principles of federalism inherent in the Constitution.

100. Defendants have, for all practical purposes, unlawfully "commandeer[ed] the State's legislative processes" by effectively compelling the State and its political subdivisions to provide numerous costly services to aliens allowed by defendants to enter the State. New York v. United States, 112 S.Ct. 2408, 2412, citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288, 101 S.Ct. 2352, 2366, 69 L.Ed.2d 1 (1981). Plaintiffs are thus being unlawfully forced to pay the cost of the Federal Abdication and Default Policy.

101. Defendants' actions have fundamentally impaired the sovereign rights and interests of the State, and have unlawfully imposed upon this State the economic burden of the Federal Abdication and Default Policy.

102. Defendants' actions and policies also diminish or abolish the political accountability guaranteed by Article IV, § 4 and the Tenth Amendment. Because only a small number of states are similarly affected, the political process has proven inadequate to protect Florida's rights.

103. For all practical purposes, the commandeering of the State of Florida's resources herein complained of has been as great as that involved in *New York v. United States, supra*, and is equally unconstitutional.

104. Although defendants' could satisfy their obligations under Article IV, § 4 and the Tenth Amendment by carrying out their duties to enforce the immigration laws effectively, defendants could equally meet their constitutional responsibilities through an ongoing restitution to the plaintiffs of the costs imposed on them by the Federal Abdication and Default Policy. For the reasons stated in paragraph 14, a broad-scale injunction commanding the defendants to protect Florida borders from an invasion of aliens might raise troubling issues of judicial power. However, no such issues would be raised by a mandatory injunction compelling the provision of ongoing restitution as an alternative remedy until such time as defendants bring their enforcement policies into compliance with applicable law.

WHEREFORE, plaintiffs pray that this Court:

(i) enter a declaratory judgment determining that defendants have failed to comply with their duties under the Constitution and applicable laws and that their abdication of their obligations constitutes a repeated and continuing violation of plaintiffs' rights under Article IV, § 4, and the Tenth Amendment to the United States Constitution.

(ii) enter an injunction directing the defendants to cease the policies that have subjected plaintiffs to an invasion of aliens and commandeered their legislative processes to meet the resulting costs or, in the alternative, to provide to the plaintiffs equitable restitution of the amounts that plaintiffs have been and will continue to be required to spend as a result of defendants' Federal Abdication and Default Policy; and

(iii) grant such other relief as may be just and proper in the circumstances.

Respectfully submitted,

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Dated: April ___, 1994